

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32735
<b>DANIEL J. PORTERIE</b>	)	
United States Air Force	)	3 October 2022
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **10 December 2022**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[Redacted signature block]

ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[Redacted address block]



**GRANTED**

**4 OCT 2022**

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 3 October 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



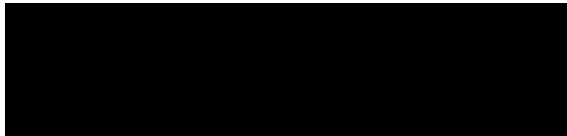
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32735
DANIEL J. PORTERIE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

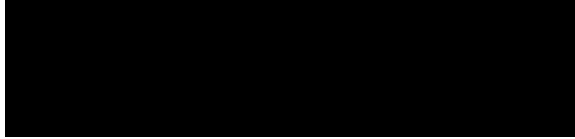


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force

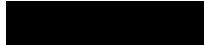


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 4 October 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32735
<b>DANIEL J. PORTERIE</b>	)	
United States Air Force	)	14 November 2022
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 January 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 94 days have elapsed. On the date requested, 150 days will have elapsed.

On 27 April 2022, at Joint Base McGuire-Dix-Lakehurst, New Jersey, Appellant was convicted and sentenced in accordance with his pleas of one charge and one specification of assault in violation of Article 128, Uniform Code of Military Justice (UCMJ) and one charge and one specification of willfully disobeying superior commissioned officer in violation of Article 90, UCMJ.<sup>1</sup> R. at EOJ. The military judge sentenced Appellant to 210 days of confinement,<sup>2</sup> reduction to E-2, and a bad conduct discharge. *Id.* On 18 May 2022, the convening authority



\_\_\_\_\_ citations alleging violations of Article 128, UCMJ, were withdrawn and dismissed. Vol. 1, Entry of Judgment in the Case of *United States v. Senior Airman Daniel J. Porterie*, dated 26 May 2022 (hereinafter “EOJ”). Appellant received 161 days of pretrial confinement credit. *Id.*

**GRANTED**

**16 NOVEMBER 2022**

took no action on the findings or sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. SrA Daniel J. Porterie*, dated 18 May 2022.

The record of trial consists of seven prosecution exhibits; five appellate exhibits; and one court exhibit. The transcript is 87 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Undersigned counsel recognizes this request for enlargement of time could be considered early, as there is approximately one month remaining in the current time period for submission of Appellant’s AOE. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Counsel is therefore submitting this request in an abundance of caution in considering the foregoing information. Should additional requests for enlargement of time become necessary prior to return from convalescent leave, undersigned counsel will ensure completion through assignment of co-counsel.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to review Appellant’s case and advise Appellant regarding potential errors.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



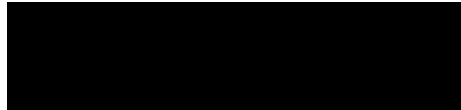
ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 14 November 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division





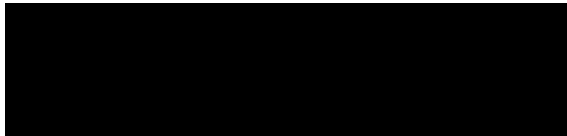
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32735
DANIEL J. PORTERIE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

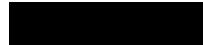
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

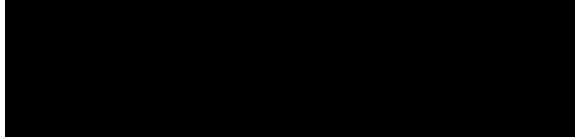


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 15 November 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (THIRD)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32735
<b>DANIEL J. PORTERIE</b>	)	
United States Air Force	)	5 December 2022
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 February 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 115 days have elapsed. On the date requested, 180 days will have elapsed.

On 27 April 2022, at Joint Base McGuire-Dix-Lakehurst, New Jersey, Appellant was convicted and sentenced in accordance with his pleas, of one charge and one specification of assault in violation of Article 128, Uniform Code of Military Justice (UCMJ) and one charge and one specification of willfully disobeying superior commissioned officer in violation of Article 90, UCMJ. The military judge sentenced Appellant to 210 days of confinement,<sup>2</sup> and a bad conduct discharge. *Id.* On 18 May 2022, the convening authority



**GRANTED**

**8 DEC 2022**

<sup>1</sup> Two specifications alleging violations of Article 128, UCMJ, were withdrawn and dismissed. Record (R.) at Vol. 1, Entry of Judgment in the Case of *United States v. Senior Airman Daniel J. Porterie*, dated 26 May 2022 (hereinafter “EOJ”).

<sup>2</sup> Appellant received 161 days of pretrial confinement credit. *Id.*

took no action on the findings or sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. SrA Daniel J. Porterie*, dated 18 May 2022.

The record of trial consists of seven prosecution exhibits; five appellate exhibits; and one court exhibit. The transcript is 87 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Undersigned counsel recognizes this request for enlargement of time could be considered early, as there is over one month remaining in the current time period for submission of Appellant’s AOE. [REDACTED]

[REDACTED]

[REDACTED] Though counsel anticipates having access to email in this time, significant drafting and review time will be lost. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appellant has been informed of these developments and the delay in review that will result from counsel’s [REDACTED]. Appellant specifically consents to this request for enlargement of time and affirmatively seeks to maintain undersigned counsel as his defense attorney. Should additional requests for enlargement of time become necessary [REDACTED]

[REDACTED], undersigned counsel will ensure completion through assignment of new or co-counsel.

Through no fault of Appellant's, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to review Appellant's case and advise Appellant regarding potential errors.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



aj, USAF

Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 December 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	
Senior Airman (E-4)	)	ACM S32735
DANIEL J. PORTERIE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States does not oppose Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case. [REDACTED], the United States does not oppose this request for an enlargement of time. However, the United States will likely oppose future enlargements of time when counsel or co-counsel becomes available to work on this brief.

WHEREFORE, the United States respectfully requests that this Court grant Appellant's enlargement motion.

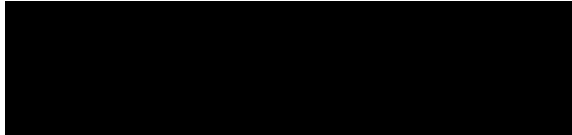
[REDACTED]

MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force

[REDACTED]

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 6 December 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force





IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (FOURTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32735
<b>DANIEL J. PORTERIE</b>	)	
United States Air Force	)	30 January 2023
	)	
	)	

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 March 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 27 April 2022, at Joint Base McGuire-Dix-Lakehurst, New Jersey, Appellant was convicted and sentenced in accordance with his pleas, of one charge and one specification of assault in violation of Article 128, Uniform Code of Military Justice (UCMJ) and one charge and one specification of willfully disobeying superior commissioned officer in violation of Article 90, UCMJ at EOJ. The military judge sentenced Appellant to 210 days of confinement,<sup>2</sup> and a bad conduct discharge. *Id.* On 18 May 2022, the convening authority



**GRANTED**

**31 JAN 2023**

<sup>1</sup> Two specifications alleging violations of Article 128, UCMJ, were withdrawn and dismissed. Record (R.) at Vol. 1, Entry of Judgment in the Case of *United States v. Senior Airman Daniel J. Porterie*, dated 26 May 2022 (hereinafter “EOJ”).

<sup>2</sup> Appellant received 161 days of pretrial confinement credit. *Id.*

took no action on the findings or sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. SrA Daniel J. Porterie*, dated 18 May 2022.

The record of trial consists of seven prosecution exhibits; five appellate exhibits; and one court exhibit. The transcript is 87 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Through no fault of Appellant's, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant's case. Since filing the last EOT in this case, counsel reviewed and submitted an AOE in *United States v. Dunleavy*, ACM No. S32724, completed review of the record in *United States v. Stradtmann*, ACM No. 40237, and submitted a Petition for Grant of Review and Supplement to the Petition before the Court of Appeals for the Armed Forces in *United States v. Tarnowski*, ACM No. 40110. Approximately one day of review time since returning from convalescent leave on 9 January was lost for recent medical appointments. Undersigned counsel is currently assigned 20 cases, 11 of which are pending initial AOE before this Court. Four cases have priority for submission of the initial AOE to this Court:

1. *United States v. Stradtmann*, ACM No. 40237 – The record of trial consists of 35 prosecution exhibits, 12 defense exhibits, 116 appellate exhibits, and 3 court exhibits; the transcript is 871 pages. Counsel has completed review of this case and begun drafting this Appellant's AOE, including potential issues being raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). Counsel has identified 18 potential issues, including failures to state an offense, improper denial of character evidence, improper admission of character and sentencing evidence, factual and legal sufficiency, unconstitutional vagueness, and fatal variance. Counsel is in the process of researching and drafting these issues, with the Statement of the Case, Statement of Facts, and two issues currently fully drafted.

2. *United States v. Lee*, ACM No. 40258 – The record of trial consists of five prosecution exhibits, eleven defense exhibits, and twenty-four appellate exhibits; the transcript is 595 pages. Counsel has not yet begun review of this Appellant’s case.

3. *United States v. Pelletier*, ACM No. 40277 – The record of trial consists of three prosecution exhibits; 21 defense exhibits; and five appellate exhibits; the transcript is 83 pages. Counsel has not yet begun review of this case.

4. *United States v. Haynes*, ACM No. 40306 – The record of trial consists of four prosecution exhibits; 11 defense exhibits; 18 appellate exhibits; and two court exhibits; the transcript is 216 pages. Counsel has not yet begun review of this case.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to review Appellant’s case and advise Appellant regarding potential errors.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 30 January 2023.

Respectfully submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

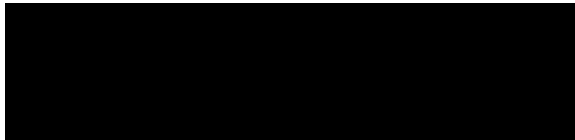
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32735
DANIEL J. PORTERIE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

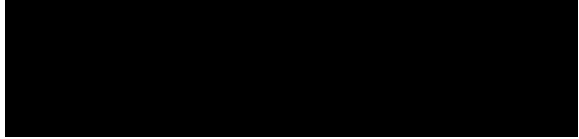


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 30 January 2023.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**.IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32735
<b>DANIEL J. PORTERIE</b>	)	
United States Air Force	)	1 March 2023
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 April 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed.

On 27 April 2022, at Joint Base McGuire-Dix-Lakehurst, New Jersey, Appellant was convicted and sentenced in accordance with his pleas, of one charge and one specification of assault in violation of Article 128, Uniform Code of Military Justice (UCMJ) and one charge and one specification of willfully disobeying superior commissioned officer in violation of Article 90, UCMJ.<sup>1</sup> R. at EOJ. The military judge sentenced Appellant to 210 days of confinement,<sup>2</sup> reduction to E-2, and a bad conduct discharge. *Id.* On 18 May 2022, the convening authority

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<sup>1</sup> Two specifications alleging violations of Article 128, UCMJ, were withdrawn and dismissed. Record (R.) at Vol. 1, Entry of Judgment in the Case of *United States v. Senior Airman Daniel J. Porterie*, dated 26 May 2022 (hereinafter “EOJ”).

<sup>2</sup> Appellant received 161 days of pretrial confinement credit. *Id.*

took no action on the findings or sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. SrA Daniel J. Porterie*, dated 18 May 2022.

The record of trial consists of seven prosecution exhibits; five appellate exhibits; and one court exhibit. The transcript is 87 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Since filing the last EOT in this case, counsel submitted an AOE before this Court in *United States v. Stradtman*, ACM No. 40237, and submitted a Petition for Grant of Review and Supplement to the Petition before the Court of Appeals for the Armed Forces in *United States v. Todd*, ACM S32701, Dkt. No 23-0093. Counsel will be submitting an AOE to this Court in *United States v. Thompson*, ACM No. 40019 prior to 7 March 2023, and has begun review in *United States v. Pelletier*, ACM No. 40277. Undersigned counsel is currently assigned 21 cases, 12 of which are pending initial AOE before this Court. Four cases have priority for submission of the AOE to this Court:

1. *United States v. Thompson*, ACM No. 40019 – The record of trial consists of 20 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits; the transcript is 440 pages. Counsel has completed review of this case and is nearing completion of this Appellant’s AOE. Counsel anticipates filing this AOE prior to 7 March 2023.

2. *United States v. Pelletier*, ACM No. 40277 – The record of trial consists of three prosecution exhibits; 21 defense exhibits; and five appellate exhibits; the transcript is 83 pages. Counsel has begun review of Appellant’s case, identified at least one potential error, and begun drafting the AOE. Counsel anticipates filing a motion to examine sealed materials within the next week. Counsel anticipates filing this AOE no later than 30 March 2023.



3. *United States v. Lee*, ACM No. 40258 – The record of trial consists of five prosecution exhibits, eleven defense exhibits, and twenty-four appellate exhibits; the transcript is 595 pages. Counsel has begun, but not yet completed review of this appellant’s case.

4. *United States v. Haynes*, ACM No. 40306 – The record of trial consists of four prosecution exhibits; 11 defense exhibits; 18 appellate exhibits; and two court exhibits; the transcript is 216 pages. Counsel has not yet begun review of this case.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to review Appellant’s case and advise Appellant regarding potential errors.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 1 March 2023.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Alexandra K. Fleszar.

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

A solid black rectangular redaction box covering the contact information, including phone and email details.

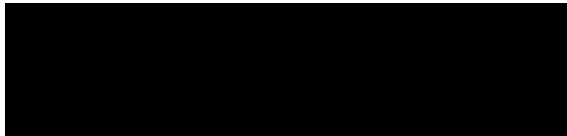
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32735
DANIEL J. PORTERIE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

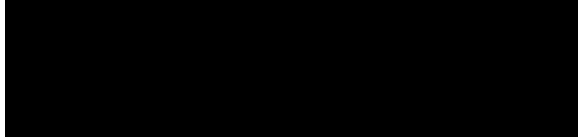


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 2 March 2023.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM S32735
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Daniel J. PORTERIE	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 1 March 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth), requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 2d day of March, 2023,

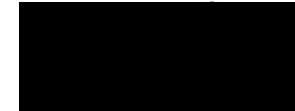
**ORDERED:**

Appellant’s Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant’s brief will be due **9 April 2023**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of Appellant’s right to a timely appeal, (2) whether Appellant was advised of the request for an enlargement of time, and (3) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT



ANTHONY F. ROCK, Maj, USAF  
Deputy Clerk of the Court

**.IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SIXTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32735
<b>DANIEL J. PORTERIE</b>	)	
United States Air Force	)	22 March 2023
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 May 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 222 days have elapsed. On the date requested, 270 days will have elapsed.

On 27 April 2022, at Joint Base McGuire-Dix-Lakehurst, New Jersey, Appellant was convicted and sentenced in accordance with his pleas, of one charge and one specification of assault in violation of Article 128, Uniform Code of Military Justice (UCMJ) and one charge and one specification of willfully disobeying superior commissioned officer in violation of Article 90, at EOJ. The military judge sentenced Appellant to 210 days of confinement,<sup>2</sup> E-2, and a bad conduct discharge. *Id.* On 18 May 2022, the convening authority



**GRANTED**

**24 MAR 2023**

<sup>1</sup> Two specifications alleging violations of Article 128, UCMJ, were withdrawn and dismissed. Record (R.) at Vol. 1, Entry of Judgment in the Case of *United States v. Senior Airman Daniel J. Porterie*, dated 26 May 2022 (hereinafter “EOJ”).

<sup>2</sup> Appellant received 161 days of pretrial confinement credit. *Id.*

took no action on the findings or sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. SrA Daniel J. Porterie*, dated 18 May 2022.

The record of trial consists of seven prosecution exhibits; five appellate exhibits; and one court exhibit. The transcript is 87 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Since filing the last EOT in this case, counsel submitted two AOE’s before this Court, in *United States v. United States v. Thompson*, ACM No. 40019 and *United States v. Pelletier*, ACM No. 40277. Undersigned counsel is currently assigned 22 cases, 12 of which are pending initial AOE before this Court. Two cases have priority for submission of the AOE to this Court:

1. *United States v. Lee*, ACM No. 40258 – The record of trial consists of five prosecution exhibits, eleven defense exhibits, and twenty-four appellate exhibits; the transcript is 595 pages. Counsel has begun, but not yet completed review of this appellant’s case.

2. *United States v. Haynes*, ACM No. 40306 – The record of trial consists of four prosecution exhibits; 11 defense exhibits; 18 appellate exhibits; and two court exhibits; the transcript is 216 pages. Counsel has not yet begun review of this case.

Additionally, Counsel anticipates filing a Replies to the Government’s Answers in *United States v. Stradtman*, ACM No. 40237 and *United States v. United States v. Thompson*, ACM No. 40019, prior to submission of Appellant’s AOE.

[REDACTED]  
[REDACTED]  
[REDACTED], significant review and drafting

time will be lost [REDACTED]

[REDACTED]

[REDACTED]. Counsel is requesting this enlargement of time both because the current deadline falls within the period of [REDACTED] and to ensure there is sufficient time for the Appellate Defense Division to assign new counsel, should this be required.

Appellant has been informed of these developments and the delay in review that will result from counsel's [REDACTED]. Appellant specifically consents to this request for enlargement of time and affirmatively seeks to maintain undersigned counsel as his defense attorney. Should additional requests for enlargement of time become necessary prior [REDACTED] [REDACTED], undersigned counsel will ensure completion through assignment of new or co-counsel.

Through no fault of Appellant's, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to review Appellant's case and advise Appellant regarding potential errors.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 22 March 2023.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



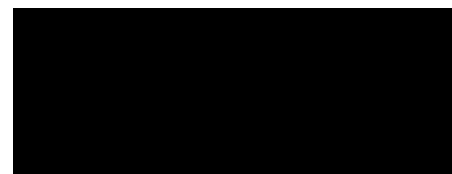
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' RESPONSE TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	
Senior Airman (E-4)	)	ACM S32735
DANIEL J. PORTERIE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States does not oppose Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case. Due to Appellant's counsel's unexpected upcoming surgery, the United States does not oppose this request for an enlargement of time. However, the United States will likely oppose future enlargements of time when counsel or co-counsel becomes available to work on this brief.

WHEREFORE, the United States respectfully requests that this Court grant Appellant's enlargement motion.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force

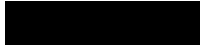


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 23 March 2023.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION TO EXAMINE</b>
	)	<b>SEALED MATERIALS</b>
v.	)	
	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32735
<b>DANIEL J. PORTERIE</b>	)	
United States Air Force	)	1 May 2023
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rule 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves to examine the sealed portion of Prosecution Exhibit 1, Attachment 1.<sup>1</sup> On 27 April 2022, at Joint Base McGuire-Dix-Lakehurst, New Jersey, Appellant was convicted and sentenced in accordance with his pleas, of one charge and one specification of assault in violation of Article 128, Uniform Code of Military Justice (UCMJ) and one charge and one specification of willfully disobeying superior commissioned officer in violation of Article 90, UCMJ.<sup>2</sup> R. at Vol. 1, EOJ. The military judge sentenced Appellant to 210 days of confinement,<sup>3</sup> reduction to E-2, and a bad conduct discharge. R. at 87.

Prosecution Exhibit 1 is the Stipulation of Fact in the case and Attachment 1 is a video recording of the assault alleged in Charge I, Specification I, to which SrA Porterie pleaded guilty.

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<sup>1</sup> A copy of Attachment 1 to Prosecution Exhibit 1 is also contained in the record as DD Form 457, Preliminary Hearing Officer (PHO) Report, Attachment 2. Undersigned counsel does not believe review of the copy contained in the PHO Report is reasonably necessary to fulfill her responsibilities at this time. *See* R.C.M. 1113(b)(3)(B)(i).

<sup>2</sup> Two specifications alleging violations of Article 128, UCMJ, were withdrawn and dismissed. Record (R.) at Vol. 1, Entry of Judgment in the Case of *United States v. Senior Airman Daniel J. Porterie*, dated 26 May 2022 (hereinafter “EOJ”).

<sup>3</sup> Appellant received 161 days of pretrial confinement credit. *Id.*

*See* Prosecution Exhibit (Pros. Ex.) 1; R. at 12, 56. Prosecution Exhibit 1, Attachment 1 was reviewed by both trial and defense counsel and submitted to the court. R. at 15, 55-56. The military judge sealed the attachment. R. at 56. Trial counsel referenced depictions from the video multiple times in making a sentencing argument, characterizing the assault as “brutal,” describing how SrA Porterie appeared in the video, and quantifying the number of “separate assaults” that allegedly took place in the video. R. at 76-80.

R.C.M. 1113(b)(3)(B)(i) requires a colorable showing that examination of this material is reasonably necessary to appellate counsel’s responsibilities. Undersigned counsel asserts that review of Prosecution Exhibit I, Attachment 1 is necessary to conduct a complete review of the record of trial and be in a position to advocate competently on behalf of Appellant. In order to provide competent representation, undersigned counsel must review the sealed material to, *inter alia*, adequately evaluate evidence presented against SrA Porterie which may have resulted in his plea of guilty and which founded the Stipulation of Fact and the factual basis for Trial Counsel’s sentencing arguments. *See* R. at 12, 55-56, 76-80.

Finally, a review of the entire record of trial is necessary because this Court is empowered by Article 66, Uniform Code of Military Justice (UCMJ), to grant relief based on a review and analysis of “the entire record.” To determine whether the record of trial yields grounds for this Court to grant relief under Article 66, UCMJ, appellate defense counsel must, therefore, examine “the entire record.” The sealed material referenced above must be reviewed to ensure undersigned counsel provides “competent appellate representation.” *United States v. May*, 47 M.J. 478, 481, (C.A.A.F. 1998). Accordingly, examination of these materials is reasonably necessary since counsel cannot fulfill her duty of representation under Article 70, UCMJ, without first reviewing the complete record of trial.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the motion.

Respectfully submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 1 May 2023.

Respectfully submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	TO EXAMINE
v.	)	SEALED MATERIAL
	)	
Senior Airman (E-4)	)	ACM S32735
DANIEL J. PORTERIE, USAF )	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Sealed Material. The United States does not object to Appellant's counsel reviewing the materials listed in Appellant's motion –which appear to have been available to all parties at trial – so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

The United States would not consent to Appellant's counsel viewing any exhibits that were reviewed in camera but not released to the parties unless this Court has first determined there is good cause for Appellant's counsel to do so under R.C.M. 1113.

WHEREFORE, the United States respectfully responds to Appellant's motion.

[Redacted Signature]

MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
United States Air Force

[Redacted]



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 1 May 2023.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
United States Air Force



**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MERITS BRIEF</b>
<i>Appellee,</i>	)	
	)	Before Panel No. 1
v.	)	
	)	No. ACM S32735
Senior Airman (E-4)	)	
<b>DANIEL J. PORTERIE,</b>	)	8 May 2023
United States Air Force	)	
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

**Submission of Case Without Specific Assignments of Error**

Undersigned appellate defense counsel attests she has, on behalf of Appellant, carefully examined the record of trial in this case. Appellant does not admit that the findings and sentence are correct in law and fact, but submits the case to this Honorable Court on its merits with no specific assignments of error.<sup>1</sup>

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<sup>1</sup> Appellant has conformed this brief to the format in Appendix B of this Honorable Court’s Rule of Practice and Procedure. Appellant understands this Court will exercise its independent “awesome, plenary, and de novo power” to review the entire record of this proceeding for factual and legal sufficiency, and for sentence propriety, and to “substitute its judgment” for that of the court below, as is provided for and required by Article 66(c), UCMJ, 10 U.S.C. §866(c) (2012) [now Article 66(d), UCMJ, 10 U.S.C. §866(d) (2019)] . *United States v. Cole*, 31 M.J. 270, 272 (C.M.A. 1990); *United States v. Chin*, 75 M.J. 220 (C.A.A.F. 2016). Appellant specifically requests this Honorable Court consider whether the findings are correct in fact. *See* Article 66(d)(1), 10 U.S.C. § 866(d)(1) (2021).

Respectfully Submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Government Trial and Appellate Operations Division on 8 May 2023.

Respectfully submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>No. ACM S32735</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Daniel J. PORTERIE</b>	)	
<b>Senior Airman (E-4)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 1 May 2023, Appellant’s counsel submitted a Motion to Examine Sealed Materials, specifically, the sealed portion of Prosecution Exhibit 1, Attachment 1.

The motion states the materials were reviewed by counsel at trial and that examination of these sealed materials is reasonably necessary to fulfill appellate counsel’s responsibilities. The Government does not oppose the motion, as long as the materials were viewed by both counsel at trial and Government counsel can also examine the sealed materials.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2019 ed.).

The court has considered Appellant’s motion, the Government’s response, case law, and this court’s Rules of Practice and Procedure. The court has reviewed the requested material. The court also finds that appellate defense counsel has made a colorable showing that review of the material is reasonably necessary to a proper fulfillment of appellate defense counsel’s responsibilities.

Accordingly, it is by the court on this 2d day of May, 2023,

**ORDERED:**

Appellant’s Motion to Examine Sealed Materials is **GRANTED**. Appellate defense counsel and appellate government counsel are authorized to examine **the sealed portion of Prosecution Exhibit 1, Attachment 1**, subject to the following conditions:

To examine these materials, counsel will coordinate with the court.

No counsel will photocopy, photograph, or otherwise reproduce this material and will not disclose or make available its contents to any other individual without this court's prior written authorization.



FOR THE COURT



FLEMING E. KEEFE, Capt, USAF  
Deputy Clerk of the Court